IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 377 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. SATYADEV CHEMICALS PRIVATE LTD. - Applicant(s)

Versus

.. - Respondent(s)

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Appearance :
NANAVATI & NANAVATI for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR MRUGESH JANI for Respondent(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/11/2006

ORAL JUDGMENT

By way of present Judges Summons, the applicant M/s Satyadev Chemicals Pvt Ltd has prayed for an appropriate order of releasing the Directors of the applicant company from the undertaking given to this Court to the effect that the sale proceeds of the land at Bhaili of the applicant company, if sold, would not be utilized for any other purpose except for the purpose of making payment to

the unsecured creditors as stated in para 17 of the order dated 13th May 2005 passed in Company Petition No.156 of 2004 while approving and sanctioning the scheme proposed by the applicant company.

2. In para 9 of the Judges summons, it is submitted by the applicant that the entire amount due and payable to the unsecured creditors have been paid and there are no unsecured creditors for whose benefit, the undertaking was required to be given by the applicant. It is submitted by Shri Bhatt, learned advocate appearing on behalf of the applicant that instead of making the payment to the unsecured creditors on phased manner, the amount has been paid at a stretch and there are no creditors of the company as on 12th May 2006 and now save and except the funds amounting to Rs.6.30 crores brought in by the proposed Directors and/or their nominees, the company has no outside debt of any nature whatsoever. By way of further affidavit dated 11th October 2006, the applicant has also produced the xerox copies of the affidavits of the unsecured creditors of the company confirming that amount has been received by them. Shri Malkan, learned Asst. Solicitor General of India appears on behalf of the respondent, Regional Director, Ministry

of Company Affairs. A letter dated 4th October 2006 addressed by Joint Director (Legal) or Regional Director addressed to Registrar of Companies is produced on record. Even an affidavit is also filed on behalf of the respondent pointing out that the office of the Regional Director (WR), Mumbai has taken a decision not to oppose the Company Application No.377 of 2006 and the matter may be decided by the Hon'ble Court after hearing the unsecured creditors.

3. It appears from the record as well as the order passed by the learned Single Judge of this Court dated 13th May 2006 passed in Company Petition No.156 of 2004 by which as per the scheme approved by this Court, company was required to give undertaking to the effect that the company would not utilize the sale proceeds of the land at Bhaili, which was intended to be sold for any other purpose except for the purpose of making payment to the unsecured creditors. It appears that the same was provided as there were unsecured creditors and the amount was to be paid to them and to secure their payment. In para 17 of the order, it was so provided and accordingly the company gave undertaking through its Managing Director. However, now in view of the fact that there are

no unsecured creditors and the entire amount due and payable to the unsecured creditors have been paid which is confirmed by the affidavits of the concerned unsecured creditors, there cannot be any difficulty in granting the prayer which is prayed in the present Judges summons. Under the circumstances, the applicant company and its Directors are relieved from the undertaking given to this Court to the effect that the sale proceeds of the land at Bhaili of the applicant company, if sold, would not be utilized for any other purpose except for the purpose of making payment to the unsecured creditors as stated in para 17 of the order dated 13th May 2005 passed in Company Petition No.156 of 2004 while approving and sanctioning the scheme proposed by the applicant company.

4. This application is accordingly allowed/disposed off. No costs.

Applicant company to pay the cost/professional charges of the respondent to be paid directly to Shri Sudhir Mehta, learned Asst. Solicitor General of India, which is quantified at Rs.2500/-.

(M.R.SHAH,J.)

shekhar/-